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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
Working Group
New York, 5-16 January 2004

Report of the Working Group to the Ad Hoc Committee

I. Introduction

1. At its 14th meeting, on 27 June 2003, the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities decided to establish a Working Group with the aim of preparing and presenting a draft text which would be the basis for negotiation by Member States and observers at the Ad Hoc Committee of the draft convention. It also decided that "the Working Group shall meet intersessionally at the United Nations Headquarters in New York for one session of ten working days early in 2004, and will present the outcome of its work on a draft text to the Ad Hoc Committee at its third session". That decision was endorsed by the General Assembly in its resolution 58/246 of 23 December 2003.

2. The Working Group is comprised of representatives of the following Governments, non-governmental organizations and national human rights institution:

Cameroon, Canada, China, Colombia, Comoros, Ecuador, Germany, India, Ireland, Jamaica, Japan, Lebanon, Mali, Mexico, Morocco, New Zealand, Philippines, Republic of Korea, Russian Federation, Serbia and Montenegro, Sierra Leone, Slovenia, South Africa, Sweden, Thailand, Uganda, Venezuela

Disability Australia Limited, Disabled Peoples' International, Disabled Peoples' International (Africa), European Disability Forum, Inclusion International, Inter-American Institute on Disability, Landmine Survivors Network, Rehabilitation International, World Blind Union, World Federation of the Deaf, World Federation of the Deafblind, World Network of Users and Survivors of Psychiatry

South African Human Rights Commission (representing national human rights institutions)

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II. Organizational matters

A. Opening and duration

3. The Working Group held its session at United Nations Headquarters in New York from 5 to 16 January 2004. In the course of its session, the Working Group held 20 formal meetings as well as a number of informal consultations.

4. The session of the Working Group was opened by the Chairman of the Ad Hoc Committee, Ambassador Luis Gallegos Chiriboga (Ecuador).

5. At its 1st meeting, on 5 January, the Working Group endorsed the appointment by the Chairman of the Ad Hoc Committee, on the basis of consultations, of Ambassador Don MacKay (New Zealand) as Coordinator of the Working Group.

B. Adoption of the agenda

6. At its 1st meeting, on 5 January, the Working Group adopted its agenda (A/AC.265/2004/WG/CRP.1/Rev.1), as follows:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Organization of work.
4. Preparation of a draft text for a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities.
5. Conclusions of the Working Group.
6. Adoption of the report of the Working Group to the Ad Hoc Committee.
7. Other business.

C. Documentation

7. In connection with its work, the Working Group had before it:

(a) A CD-ROM containing the compilation of proposals for elements of a Convention as well as individual contributions, received as of 31 December 2003;

(b) A printed version of the compilation of proposals for elements of a Convention, received as of 19 December 2003.

The following countries, organizations and individuals had submitted contributions:

Chairman of the Ad Hoc Committee

- **Chair's draft text (I-IV)**. Elements of a comprehensive and integral convention on the protection and promotion of the rights and dignity of persons with disabilities. Dated: 15 December 2003 ("Chair's draft")

- **Chair's draft text (V)**: Draft elements on implementation: application, implementation and monitoring of the Convention. Date of submission: 24 December 2003
- **Chair's draft text**: Preamble. Date of submission: 7 January 2004

Governments

- **Australia**: Australia's approach to a draft convention on the rights of people with disabilities. Dated: 17 December 2003
- **China**: Convention on rights of persons with disabilities: a proposed draft text by China. Date of submission: 11 December 2003
- **Costa Rica**: National Council for Rehabilitation and Special Education: some aspects to include in the drafting of the convention of the human rights of persons with disabilities. Date of submission: 20 November 2003
- **European Union (EU)**:
  - EU Proposal for the text of an international convention on the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Dated: 18 December 2003
  - "Elements for an International Convention", submitted at the second session of the Ad Hoc Committee (A/AC.265/2003/CRP.13/Add.2)
- **India**: Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities: draft convention, India. Dated: 31 December 2003
- **Japan**: Position paper of the Government of Japan on the comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. Date of submission: 24 December 2003
- **Mexico**: Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. Working Paper submitted by Mexico at the first session of the Ad Hoc Committee (A/AC.265/WP.1)
- **New Zealand**: New Zealand's view of a convention on the rights of disabled people. Dated: 28 November 2003
- **United States**: Disability rights law measures in the United States. Date of submission: 15 December 2003
- **Venezuela**: Comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities. Draft submitted by the Government of the Bolivarian Republic of Venezuela at the second session of the Ad Hoc Committee (A/AC.265/2003/WP.1)

National human rights institutions

- **African Regional Workshop**: Regional Workshop on Promoting the Rights of Persons with Disabilities: Towards a New United Nations Convention, Munyonyo-Kampala, Uganda, 5-6 June 2003

- **Commonwealth and Asia Pacific Region International Workshop**: An International Workshop for National Human Rights Institutions from the Commonwealth and Asia Pacific Region, New Delhi, 26-29 May 2003

Intergovernmental organizations/Regional meetings

- **Disability African Regional Consultative Conference**, Johannesburg, 1-6 May 2003
- **Bangkok Draft**: Regional Workshop towards a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Bangkok, 14-17 October 2003
- **Bangkok Recommendations**: Expert Group Meeting and Seminar on an International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities, Bangkok, 2-4 June 2003
- **Quito Seminar**: Americas Regional Seminar and Workshop on Norms and Standards related to the Rights of Persons with Disabilities and Development, Quito, 9-11 April 2003

United Nations system

- **International Labour Organization**: Submission to the Working Group of the Ad Hoc Committee to consider proposals for a comprehensive and integral international convention on protection and promotion of the rights and dignity of persons with disabilities. Date of submission: 18 December 2003
- **United Nations Children's Fund**: Proposals to the Working Group on an international convention on the protection and promotion of the rights and dignity of persons with disabilities. Date of submission: 2 January 2004

Non-governmental organizations

- **Disabled Peoples' International (DPI)**: DPI position paper regarding a new international human rights convention for disabled people. Dated: 25 February 2003
- **Disabled Peoples International — Japan**: DPI Japan Assembly position paper regarding the convention. Date of submission: 19 June 2003
- **European Disability Forum (EDF)**: EDF contribution to the second Ad Hoc Committee to consider proposals for a United Nations convention to protect and promote the rights of persons with disabilities. Dated: May 2003
- **Inclusion International**:
  - Some reflections, proposals and recommendations for the International Disability Alliance meeting on the Convention to protect the rights of disabled persons. Dated: February 2003
  - Some reflections regarding the preparation of a comprehensive and integral convention on the promotion and protection of the rights and dignity of persons with disabilities. Date of submission: 30 December 2003

- **International Disability Alliance**: Towards a United Nations disability convention: statement for second Ad Hoc Committee session. Dated: 2 March 2003

- **Rights into Action — the International Network of Young Disabled People**: A position statement on the proposed comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. Dated: 16 December 2003

- **World Blind Union**: Manifesto for a United Nations Convention on the Rights of People with Disabilities. Dated: February 2003

- **World Network of Users and Survivors of Psychiatry:** Submission to the United Nations Ad Hoc Committee in 2003 and contributions submitted on 30 December 2003 and 5 January 2004

Others/individuals

- **Online consultation** organized by the Department of Economic and Social Affairs; comments on the draft text presented by Mexico

- **Coalition of Individuals, Organizations and Agencies of the People, for the People and by the People with Disabilities in Eastern Europe** (Belarus, Poland, Republic of Moldova, Russian Federation and Ukraine) (Coalition Eastern Europe). Date of submission: 13 December 2003

8. The Working Group also had before it the following documents:

(a) Provisional agenda (A/AC.265/2004/WG/CRP.1/Rev.1);

(b) Organization of work (A/AC.265/2004/WG/CRP.2);

(c) Text proposed by the Coordinator (A/AC.265/2004/WG/CRP.3 and Add.1-25);

(d) Annex I to the draft report (text of the draft convention) (A/AC.265/2004/WG/CRP.4 and Add.1-2 and 4-5);

(e) Draft report of the Working Group (A/AC.265/2004/WG/CRP.5).

III. Preparation of a draft text for a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities

9. The Working Group noted that its mandate from the Ad Hoc Committee was to prepare and present a draft text which would be the basis for negotiations at the Ad Hoc Committee, taking into account all contributions submitted in advance of the meetings of the Working Group. The Working Group was not mandated to negotiate a final text, and was not tasked with being a drafting committee. The Working Group therefore saw its task as identifying possible approaches, and narrowing down the options, including those found in the compilation of proposals, so as to provide a basis for further work in the Ad Hoc Committee.

10. Accordingly, the draft text prepared and presented by the Working Group represents the outcome of discussions to achieve that objective, and not the position

of any particular delegation in the Working Group. Delegations represented in the Working Group made clear that they wish to discuss many issues further in the Ad Hoc Committee.

IV. Conclusions of the Working Group

11. At its 20th meeting, on 16 January, the Working Group decided to present the attached text (see annex I) to the Ad Hoc Committee as a basis for negotiations, as mandated by the Committee, on the understandings set out in section III of the present report, as well as to append the "Summary of the discussions held regarding the issue of international cooperation to be considered by the Ad Hoc Committee" (see annex II).

V. Adoption of the report of the Working Group to the Ad Hoc Committee

12. At its 20th meeting, on 16 January, the Working Group adopted by consensus its report to the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities at its third session.

Annex I

Draft comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities[1]

The States Parties to this Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Reaffirming also* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[2]

(e) *Recognizing* the importance of the principles and policy guidelines contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(f) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity of the human person,

(g) *Recognizing further* the diversity of persons with disabilities,

(h) *Concerned* that, despite the efforts and actions undertaken by Governments, bodies and relevant organizations, persons with disabilities continue to face barriers in their participation as equal members of society and violations to their human rights in all parts of the world,

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[1] Several members of the Working Group made proposals on alternative structures for the draft Convention, and also on its title. The Ad Hoc Committee may wish to consider the structure and title of the draft further.

[2] Some members of the Working Group considered that there should not be a reference to the Migrant Workers Convention on the grounds that it did not have the same status as the other International Covenants and Conventions listed. Other members pointed out that the Convention had entered into force and should therefore be listed.

(i) *Emphasizing* the importance of international cooperation[3] to promote the full enjoyment of human rights and fundamental freedoms of persons with disabilities,[4]

(j) *Emphasizing also* the existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in significant advances in the human, social and economic development of their societies and the eradication of poverty,

(k) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(l) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, especially those directly concerning them,

(m) *Concerned* about the difficult conditions faced by persons with severe or multiple disabilities and of persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,[5]

(n) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(o) *Mindful* of the need to alleviate the negative impact of poverty on the conditions of persons with disabilities,[6]

(p) *Concerned* that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities,

(q) *Recognizing* the importance of accessibility to the physical, social and economic environment and to information and communication, including information and communication technologies, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(r) *Convinced* that a convention dealing specifically with the human rights of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their

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[3] Some members of the Working Group considered that there should not be a reference to international cooperation in the preamble, or that it should be subject to final agreement on whether the issue of international cooperation should be addressed in the Convention, and if so, where it should be included. A more extensive summary of the discussion on this issue is given in annex II to the present report.

[4] The following alternative formulation was also proposed for consideration: "*Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, in particular in the developing countries".

[5] See the footnotes to paragraph 1 (c) of draft article 23 on social security and an adequate standard of living.

[6] Some members of the Working Group had reservations about the wording of this paragraph.

participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Hereby agree as follows:

Article 1
Purpose

The purpose[7] of this Convention shall be to ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.[8]

Article 2
General principles

The fundamental principles of this Convention shall be:

(a) Dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full inclusion of persons with disabilities as equal citizens and participants in all aspects of life;

(d) Respect for difference and acceptance of disability as part of human diversity and humanity;

(e) Equality of opportunity.

Article 3
Definitions[9]

"Accessibility"[10]

"Communication" includes oral-aural communication, communication using sign language, tactile communication, Braille, large print, audio, accessible multimedia, human reader and other augmentative or alternative modes of communication, including accessible information and communication technology.[11]

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[7] Some members of the Working Group suggested that international cooperation should be included as one of the objectives of the Convention. Other members suggested that international cooperation was a means to achieve the objectives of the Convention, and not an objective itself. See also preambular paragraph (i).

[8] An alternative formulation that the Ad Hoc Committee may wish to consider is: "The purpose of this Convention shall be to protect and promote the rights of persons with disabilities."

[9] In the consideration of this article, the Ad Hoc Committee may wish to take into account the different proposals that were presented to the Committee and the Working Group regarding the specific definitions of the concepts herein contained.

[10] The need for a definition of "accessibility" and the content of any definition will depend on the outcome of the discussion in the Ad Hoc Committee on draft article 19 on accessibility.

[11] The Ad Hoc Committee may wish to consider the need for a definition of "communication" (separate from draft article 13 on freedom of expression and opinion), and if so, the content of that definition.

"Disability"[12]

"Persons with disability"[13]

"Discrimination on the ground of disability"[14]

"Language" includes oral-aural language and sign language.[15]

"Reasonable accommodation"[16]

"Universal design" and "Inclusive design".[17]

Article 4
General obligations[18,19]

1. States Parties undertake to ensure the full realization of all human rights and fundamental freedoms for all individuals within their jurisdiction[20] without

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[12] Many members of the Working Group emphasized that a convention should protect the rights of all persons with disabilities (i.e. all different types of disabilities) and suggested that the term "disability" should be defined broadly. Some members were of the view that no definition of "disability" should be included in the Convention, given the complexity of disability and the risk of limiting the ambit of the Convention. Other delegations pointed to existing definitions used in the international context, including the World Health Organization's International Classification of Functioning, Disability and Health (ICF). There was general agreement that if a definition was included, it should be one that reflected the social model of disability, rather than the medical model.

[13] Some members of the Working Group considered that it was more important to include this definition than the definition of "disability". Other members were of the view that a definition of this term was not necessary.

[14] This definition is addressed in draft article 7 on equality and non-discrimination. The Ad Hoc Committee may wish to consider the best placement for this definition.

[15] Some delegations were of the view that the separate draft articles of the Convention specified that language included sign language, and questioned the need for that definition in the present article. Others expressed the view that the definition was needed.

[16] The definition of this concept was not discussed beyond the definition that is included in draft article 7, although the Working Group considered it necessary to include it.

[17] These definitions were not discussed, but the Working Group considered that they would be useful.

[18] Both the Bangkok draft and the Chair's draft included in this section a paragraph on remedies. Some members of the Working Group noted that while the International Covenant on Civil and Political Rights included such a provision, the International Covenant on Economic, Social and Cultural rights did not. It may be difficult, therefore, to include such an article in a convention that elaborates the rights contained in both Covenants. The Ad Hoc Committee may wish to consider this issue further.

[19] The issue of the progressive realization of economic, social and cultural rights was raised by several delegations during the Working Group's discussion. The Working Group noted that, consistent with existing international human rights law, the concept would apply to some of the rights in the Convention (the economic, social and cultural rights), but not to others (the civil and political rights). The Ad Hoc Committee will need to consider how best to incorporate this issue into the Convention, and may wish to note the precedent set in the Convention on the Rights of the Child. The debate was raised in relation to other articles also.

[20] The phrase "within their jurisdiction" will need closer examination by the Ad Hoc Committee. It is taken from article 2 of the Convention on the Rights of the Child. It may be too inclusive and imply, for example, that rights that are not guaranteed for non-citizens could be extended to non-citizens with disabilities. Article 1 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination may offer an alternative approach, but that may be too exclusive and imply that non-citizens with disabilities do not enjoy any of the protections of the present Convention.

discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this Convention;

(b) To embody the rights of equality and non-discrimination on the ground of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of these rights;

(c) To mainstream disability issues into all economic and social development policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with this Convention and to ensure that public authorities and institutions act in conformity with this Convention;

(e) To take all appropriate measures to eliminate discrimination on the ground of disability by any person, organization or private enterprise;

(f) To promote[21] the development, availability and use of universally designed goods, services, equipment and facilities. Such goods, services, equipment and facilities should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities.[22]

2. In the development and implementation of policies and legislation to implement this Convention, States Parties shall do so in close consultation with, and include the active involvement of, persons with disabilities and their representative organizations.

Article 5
Promotion of positive attitudes to persons with disabilities

1. States Parties undertake to adopt immediate and effective measures to:

(a) Raise awareness throughout society regarding disability and persons with disabilities;

(b) Combat stereotypes and prejudices about persons with disabilities;

(c) Promote an image of persons with disabilities as capable and contributing members of society sharing the same rights and freedoms as all others and in a manner consistent with the overall purpose of this Convention.

2. These measures shall include, among others:

(a) Initiating and maintaining an effective public awareness campaign designed to nurture receptiveness to the rights of persons with disabilities;

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[21] The Ad Hoc Committee may wish to consider whether a term that places stronger obligations on States Parties should replace "promote".

[22] The Ad Hoc Committee may wish to consider whether the term "universal design" or its near synonym "inclusive design" should be used here and throughout the Convention. The Ad Hoc Committee may also wish to consider whether this paragraph should remain as part of draft article 4, be incorporated into draft article 19 or be a separate article in its own right.

(b) Promoting awareness, including in all children from an early age and at all levels of the education system, to foster an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention;

(d) Working in partnership with persons with disabilities and their representative organizations in all measures taken to give effect to the obligations contained in this article.

Article 6
Statistics and data collection[23]

In order to formulate and implement appropriate policies to protect and promote the rights of persons with disabilities, States Parties should encourage the collection, analysis and codification of statistics and information on disabilities and on the effective enjoyment of human rights by persons with disabilities. The process of collecting and maintaining this information should:

(a) Respect the right to privacy, the dignity and the rights of persons with disabilities, and the information collected from persons with disabilities should be on a voluntary basis;

(b) Be kept only in a statistical format without identifying individuals and should be kept secure to prevent unauthorized access or misuse of information;

(c) Ensure that the design and implementation of data collection is done in partnership with persons with disabilities, their representative organizations and all other relevant stakeholders;

(d) Be disaggregated according to the purpose of the collection of information and should include age, sex and type of disability;

(e) Include detailed information on their access to public services, rehabilitation programmes, education, housing and employment;

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[23] There were differing views within the Working Group regarding the inclusion of this draft article. Some delegations strongly supported the inclusion of an article on statistics and data collection in the text of the Convention for several reasons. Data collection is recommended in rule 13 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Its inclusion could allow States to respond more effectively to the needs of persons with disabilities and to have an accurate assessment of the situation of the persons concerned so as to implement programmes for their benefit. General Assembly resolution 58/132 of 22 December 2003, in paragraph 8, also deals with the issue of data and statistics. In the present draft article, the respect for the right to privacy is fundamental.

Other delegations opposed the inclusion of an article on statistics and data collection in the Convention, for several reasons. They expressed a concern for the respect of the right to privacy and the risk of misusing the information, and considered that such an article did not belong in a human rights treaty. They considered that statistics were not useful as a policy tool, and that resources spent in data collection should be used instead in programmes for persons with disabilities. There should be a mainstreaming of surveys and not just surveys for persons with disabilities.

Other delegations suggested that the draft article should be re-titled. One suggestion was "Collection and protection of statistics and data". It was clearly considered that any data collected on disabilities must not infringe on the human rights of persons with disabilities.

(f) Adhere to established ethics regarding respect for anonymity and confidentiality in the collection of statistics and data.

Article 7
Equality and non-discrimination

1. States Parties recognize that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age or any other status.

2. (a) Discrimination shall mean any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal footing, of all human rights and fundamental freedoms;

(b) Discrimination shall include all forms of discrimination, including direct, indirect[24] and systemic, and shall also include discrimination based on an actual or perceived[25] disability.

3. Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and where the means of achieving that aim are reasonable and necessary.[26]

4. In order to secure the right to equality for persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to provide reasonable accommodation,[27] defined as necessary and appropriate modification and

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[24] Some members of the Working Group considered that the Convention should have a specific reference to both direct and indirect discrimination. Other members considered that the distinction between the two forms of discrimination was not sufficiently clear. They considered that both a reference to "all forms of discrimination" in paragraph 1, and the reference to the "effect" of discrimination in paragraph 2 (a), would cover the concept of indirect discrimination.

[25] The Ad Hoc Committee may wish to consider the scope of this term, and whether it should apply to the individual's perception of themselves, or society's perception of them.

[26] This paragraph has not appeared in any of the core international human rights treaties, although the concept has been developed in the jurisprudence of the treaty bodies. The Human Rights Committee has included it, for example, in its general comment on article 26 of the International Covenant on Civil and Political Rights. The Working Group discussed three options for the consideration of the Ad Hoc Committee: (a) The paragraph should not appear in the text at all; (b) the paragraph should be included only as an exception to the specific prohibition on indirect discrimination; and (c) the paragraph should apply to all forms of discrimination. In addition to those options, some members proposed adding the following phrase to the end of the paragraph: "... and consistent with international human rights law".

[27] The Ad Hoc Committee may wish to consider the following points when considering the term "reasonable accommodation":

The Working Group considered that there was a need for a concept such as "reasonable accommodation" in the Convention in order to secure compliance with the principle of non-discrimination.

There was widespread agreement in the Working Group on the need to keep the notion both general and flexible in order to ensure that it could be readily adapted to different sectors (e.g., employment, education, etc.) and in order to respect the diversity of legal traditions.

adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.

5. Special measures[28] aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.[29]

Article 8
Right to life[30]

States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.[31]

Article 9
Equal recognition as a person before the law

States Parties shall:

There was also general agreement that the process of determining what amounted to a "reasonable accommodation" should be both *individualized* (in the sense that it should consciously address the individual's specific need for accommodation) and *interactive* as between the individual and the relevant entity concerned. It was understood that an entity should not be allowed to compel an individual to accept any particular "reasonable accommodation". It was also felt, however, that in situations where a range of "reasonable accommodations" was available — each of which was, by definition, reasonable — an individual did not have the right to choose the one that he or she preferred.

There was general agreement that the availability of State funding should limit the use of "disproportionate burden" as a reason by employers and service providers not to provide reasonable accommodation.

Some members of the Working Group supported the proposition that a failure to "reasonably accommodate" should in itself constitute discrimination; some of those members highlighted General Comment No. 5 of the Committee on Economic, Social and Cultural Rights as supporting this view.

Other members of the Working Group considered that the Convention should not dictate the manner by which the concept of "reasonable accommodation" should be achieved or framed under relevant domestic legislation. Specifically, they took the view that it was inappropriate for an international legal instrument designed primarily to engage State responsibility to frame a failure to "reasonably accommodate" on the part of private entities as a violation of the non-discrimination principle.

[28] The term "special measures" is used in other international human rights treaties. The Ad Hoc Committee may wish to discuss the appropriateness of using the term in the disability context, and whether alternative terms could be used.

[29] The Ad Hoc Committee may wish to discuss whether special measures in the disability context should be limited in time or more permanent.

[30] There were different views expressed within the Working Group as to whether the Convention should include an article on the right to life, and if so, its content.

[31] In the context of the discussion on this draft article, some members of the Working Group suggested that the Convention should contain a separate draft article on the protection of the rights of persons with disabilities in armed conflict, similar to the approach taken in article 38 (4) of the Convention on the Rights of the Child. It was also suggested that such an article could deal more broadly with the protection of the rights of groups at particular risk.

(a) Recognize persons with disabilities as individuals with rights before the law equal to all other persons;

(b) Accept that persons with disabilities have full legal capacity on an equal basis as others,[32] including in financial matters;

(c) Ensure that where assistance is necessary to exercise that legal capacity:

(i) The assistance is proportional to the degree of assistance required by the person concerned and tailored to their circumstances, and does not interfere with the legal capacity, rights and freedoms of the person;

(ii) Relevant decisions are taken only in accordance with a procedure established by law and with the application of relevant legal safeguards;[33]

(d) Ensure that persons with disabilities who experience difficulty in asserting their rights, in understanding information and in communicating have access to assistance to understand information presented to them and to express their decisions, choices and preferences, as well as to enter into binding agreements or contracts, to sign documents and act as witnesses;[34]

(e) Take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit;

(f) Ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 10
Liberty and security of the person

1. States Parties shall ensure that persons with disabilities:

(a) Enjoy the right to liberty and security of the person, without discrimination based on disability;

[32] The intent of this subparagraph is to acknowledge that children are not generally accepted as having full legal capacity and that neither would, therefore, children with disabilities. In terms of legal capacity, persons with disabilities should be treated without discrimination on the basis of disability.

[33] Subparagraph (c) allows for the provision of assistance to a disabled person to exercise their legal capacity, and is based on the assumption of full legal capacity, even if the person needs assistance in exercising that capacity. It is intended that subparagraph (c) (ii) should apply only in exceptional circumstances, for which legal safeguards must be provided. The Ad Hoc Committee may wish to consider whether the subparagraph is sufficiently clear, and also how best to protect persons with disabilities who cannot exercise their legal capacity. A separate subparagraph may be required for this purpose. Some members of the Working Group proposed that where others are exercising legal capacity for a person with disabilities, those decisions should not interfere with the rights and freedoms of the person concerned.

[34] The first part of subparagraph (d) has more general application than the equal recognition of persons with disabilities as persons before the law, and the Ad Hoc Committee may wish to consider its most appropriate placement in the Convention.

(b) Are not deprived of their liberty[35] unlawfully[36] or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based on disability.[37]

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty, they are:

(a) Treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs they have because of their disabilities;

(b) Provided with adequate information in accessible formats as to the reasons for their deprivation of liberty;

(c) Provided with prompt access to legal and other appropriate assistance to:

(i) Challenge the lawfulness of the deprivation of their liberty before a court or other competent, independent and impartial authority (in which case they shall be provided with a prompt decision on any such action);

(ii) Seek regular review of the deprivation of their liberty;

(d) Provided with compensation in the case of unlawful deprivation of liberty, or deprivation of liberty based on disability, contrary to this Convention.

Article 11
Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. States Parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

2. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced

[35] The jurisprudence of the Human Rights Committee (see, for example, General Comment No. 8) notes that States interpret deprivation of liberty too narrowly, so that it applies only to the criminal justice system. The right to liberty and security of persons, however, applies to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness or intellectual disability, vagrancy, drug addition, educational purposes or immigration control. The Ad Hoc Committee may wish to consider: (a) whether civil and criminal cases should be dealt with separately; (b) whether the text needs further elaboration on civil cases of deprivation of liberty; and (c) whether, for criminal cases, the clauses in this text dealing with procedural matters need strengthening (see also article 9 of the International Covenant on Civil and Political Rights).

[36] The Ad Hoc Committee may wish to discuss whether the wording of paragraph 1 (b) does or does not prohibit civil commitment, and whether it should.

[37] The Ad Hoc Committee may wish to consider adding a provision that obliges States to reform laws and procedures that perpetuate the arrest and detention of persons with disabilities on the basis of disability.

interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment.[38]

Article 12
Freedom from violence and abuse

1. States Parties recognize that persons with disabilities are at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse. States Parties shall therefore take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.

2. Such measures should prohibit, and protect persons with disabilities from, forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment, and abduction.

3. States Parties shall also take all appropriate measures to prevent violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, by ensuring, inter alia, support for persons with disabilities and their families, including the provision of information.

4. States Parties shall ensure that all facilities and programmes, both public and private, where persons with disabilities are placed together, separate from others, are effectively monitored to prevent the occurrence of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.

5. Where persons with disabilities are the victim of any form of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, States Parties shall take all appropriate measures[39] to promote their physical and psychological recovery and social reintegration.

6. States Parties shall ensure the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse, and the provision of protection services and, as appropriate, judicial involvement.

Article 13
Freedom of expression and opinion, and access to information

States Parties shall take appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion through

[38] Members of the Working Group had differing opinions on whether forced intervention and forced institutionalization should be dealt with under "Freedom from torture", or under "Freedom from violence and abuse", or under both. Some members also considered that forced medical intervention and forced institutionalization should be permitted in accordance with appropriate legal procedures and safeguards.

[39] Some Working Group members suggested that this paragraph should include an explicit provision of legal remedies.

Braille, sign language[40] and other modes of communication[41] of their choice, and to seek, receive and impart information, on an equal footing with others, including by:

(a) Providing public information to persons with disabilities, on request, in a timely manner and without additional cost, in accessible formats[42] and technologies of their choice, taking into account different kinds of disability;

(b) Accepting the use of alternative modes of communication by persons with disabilities in official interactions;

(c) Educating persons with disabilities to use alternative and augmentative communication modes;

(d) Undertaking and promoting the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;

(e) Promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;[43]

(f) Encouraging[44] private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;

(g) Encouraging the mass media to make their services accessible to persons with disabilities.

Article 14
Respect for privacy, the home and the family

1. Persons with disabilities, including those living in institutions, shall not be subjected to arbitrary or unlawful interference with their privacy, and shall have the right to the protection of the law against such interference. States Parties to this Convention shall take effective measures to protect the privacy of the home, family, correspondence[45] and medical records of persons with disabilities and their choice to take decisions on personal matters.

[40] Some members of the Working Group considered that this draft article should include a reference to sign language as the natural language of deaf people in their access to information, communication, services, participation and education.

[41] The Ad Hoc Committee may wish to consider the most appropriate terms to use in this draft article. "Mode of communication", "format" (used in subparagraph (a)), and "alternative and augmentative communication modes" (used in subparagraph (c)) have related, but not identical meanings.

[42] The Ad Hoc Committee may wish to consider whether it should include mention of specific formats in this paragraph, such as plain language or easy-to-read formats.

[43] The Ad Hoc Committee may wish to consider expanding this subparagraph to cover the provision and training of live assistance and intermediaries, such as Braille and caption transcribers, note-takers, sign language and tactile communication interpreters, and readers.

[44] The Ad Hoc Committee may wish to consider whether "encourage" is the best term to use in subparagraphs (f) and (g).

[45] The Ad Hoc Committee may wish to consider whether the word "correspondence" should be replaced with the broader term "communications".

2. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations,[46] and in particular shall ensure:

(a) That persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood;

(b) The right of all men and women with disabilities who are of marriageable age to marry on the basis of free and full consent of the intending spouses, and to found a family;

(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children[47] on an equal basis with other persons[48] and to have access to information, reproductive and family planning education, and the means necessary to enable them to exercise these rights;

(d) The rights of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. For the purpose of guaranteeing these rights, States Parties shall render appropriate assistance to disabled parents in the performance of their child-rearing responsibilities;[49]

(e) That a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. The child shall not however be separated from parents with disabilities on the basis either directly or indirectly of their disability;[50]

(f) The promotion of awareness and the provision of information aimed at changing negative perceptions and social prejudices towards sexuality, marriage and parenthood of persons with disabilities.

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[46] The Ad Hoc Committee may wish to consider whether the phrase "marriage and family relations" might be too limiting.

[47] Members of the Working Group agreed that a prohibition on the sterilization of persons with disabilities was implicit in the right to decide on the number and spacing of their children, but some members considered that the issue was of such importance that the Ad Hoc Committee should consider making the prohibition explicit.

[48] The understanding of the Working Group is that this draft article does not deal with the national policies of States parties on the size of families but simply stipulates that persons with disabilities should not be treated differently from the general population in this respect. The Ad Hoc Committee may therefore wish to consider whether the phrase "on an equal basis with other persons" is necessary in this subparagraph.

[49] The Ad Hoc Committee may wish to consider the wording of the second sentence of this subparagraph in the light of concerns expressed by some delegations that States parties might find it difficult to guarantee the resources to "render appropriate assistance".

[50] The Ad Hoc Committee may wish to consider other formulations for the second sentence of this subparagraph, including the deletion of the words "either directly or indirectly" or their replacement by the word "solely", or the substitution of a positive formulation for the sentence, such as: "States Parties shall render appropriate assistance to parents with disabilities to enable their children to live with them".

Article 15
Living independently[51] and being included in the community

States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that:

(a) Persons with disabilities have the equal opportunity to choose their place of residence and living arrangements;

(b) Persons with disabilities are not obliged to live in an institution or in a particular living arrangement;[52]

(c) That persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;[53]

(d) Community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs;

(e) Persons with disabilities have access to information about available support services.

Article 16
Children with disabilities[54]

1. States Parties undertake to ensure that each child with a disability within their jurisdiction shall enjoy, without discrimination of any kind on the basis of disability, the same rights and fundamental freedoms as other children.

2. States Parties recognize that children with disabilities should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and autonomy, and facilitate the child's active participation in the community.

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[51] Some members of the Working Group expressed the concern that the words "living independently" in the title and the chapeau of this draft article did not reflect the cultural norm in many countries, and that the words might suggest that persons with disabilities should be separated from their families. The Ad Hoc Committee may wish to consider an alternative formulation.

[52] Some members of the Working Group, while accepting the principle, thought that States parties would find it impossible to guarantee this obligation without exception. Other members considered that the subparagraph was redundant, as the issue was covered in paragraph 1 (a).

[53] Some members of the Working Group considered that it would be difficult for States parties to ensure the availability of the services described in paragraphs 1 (c) and (d), and in particular the undertaking in paragraph 1 (c) to provide personal assistance.

[54] Paragraphs 2, 3 and 4 of this draft article are based on article 23 of the Convention on the Rights of the Child. That article is a specific elaboration of disability issues in a convention on children that does not otherwise deal with disabilities. Draft article 16 of the present text, however, is a specific elaboration of children's issues in a convention where the rest of the text does deal with disabilities. Duplicating article 23 in this context, therefore, may not adequately deal with the issues faced by children with disabilities. The Ad Hoc Committee may wish to revisit this draft article so that it instead covers issues that affect children with disabilities, but which have not been dealt with elsewhere in the Convention. Examples could include the vulnerability of children with disabilities to sexual abuse and exploitation, of refugee children with disabilities, and of orphan children with disabilities.

3. States Parties recognize the right of children with disabilities to inclusive care, which shall include:

(a) Early provision of appropriate and comprehensive services;

(b) The extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

4. Recognizing the needs of children with disabilities, assistance extended in accordance with paragraph 3 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that a child with a disability has effective access to and receives education, training, health-care services, comprehensive [re]habilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

5. Children with disabilities and their parents or other persons caring for or legally responsible for the child shall be provided with appropriate information, referrals and counselling, and information made available in these ways should provide them with a positive view of their potential and right to live a full and inclusive life.

Article 17
Education[55]

1. States Parties recognize the right of all persons with disabilities to education. With a view to achieving this right progressively and on the basis of equal opportunity, the education of children[56] with disabilities shall be directed to:[57]

(a) The full development of the human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) Enabling all persons with disabilities to participate effectively in a free society;

(c) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(d) Taking into account the best interests of the child, in particular by individualizing education plans

[55] The Ad Hoc Committee may wish to consider whether this draft article should cover training more extensively, drawing together the provisions on training in other articles.

[56] The Ad Hoc Committee may wish to consider whether the focus of the chapeau should be solely on "children", since other provisions of this draft article refer to "persons" with disabilities.

[57] Paragraph 1 of this draft article draws on article 13 (1) of the International Covenant on Economic, Social and Cultural Rights and article 29 (1) of the Convention on the Rights of the Child. It does not quote those sources in full, but rather selects those elements that have particular relevance to persons with disabilities. The Ad Hoc Committee may wish to give further consideration to this approach.

2. In realizing this right, States Parties shall ensure:

(a) That all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and pre-school education);[58]

(b) The provision of required support, including the specialized training of teachers,[59] school counsellors and psychologists, an accessible curriculum, an accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, an accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;

(c) That no child with disabilities is excluded from free and compulsory primary education on account of their disability.

3. States Parties shall ensure that where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning[60] should be made available. Any such special and alternative forms of learning should:[61]

(a) Reflect the same standards and objectives provided in the general education system;

(b) Be provided in such a manner as to allow children with disabilities to participate in the general education system to the maximum extent possible;[62]

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[58] The intent of this draft article is to provide the right to choose inclusive and accessible education. There is no intention to create an obligation on students with disabilities to attend general schools where their needs may not be adequately met. The Ad Hoc Committee may wish to consider whether the wording of this subparagraph is sufficiently clear.

[59] The Ad Hoc Committee may wish to consider whether this draft article should also include the employment of teachers with disabilities in the general education system (see, for example, article 10 (d) of the Indian proposal), the removal of legislative barriers to persons with disabilities becoming teachers, and raising awareness among teachers of the needs of children with disabilities.

[60] The term "learning" does not have the same meaning as the term "education". The Ad Hoc Committee may wish to consider which is the most appropriate word. An alternative word in this paragraph could be "provision".

[61] While members of the Working Group considered that choice was an important element of this paragraph, some members considered that the right to education was more important. Other members would have liked greater emphasis on the best interests of the child in this choice. Different approaches were also identified with respect to setting out the relationship between the provision of specialist education services and the general education system. Some members considered that education of children with disabilities in the general education system should be the rule, and the provision of specialist education services the exception. Others thought that specialist education services should be provided not only where the general education system was inadequate, but should rather be made available at all times without a presumption that one approach was more desirable than the other. Some members of the Working Group, for example, highlighted the need for deaf and blind children to be allowed to be educated in their own groups. If the latter approach were to be taken, the Working Group considered that there should still be an explicit obligation on the State to make the general education system accessible to students with disabilities, without limiting the individual's ability to choose either the general system or the specialist services.

[62] The intention of this subparagraph is to ensure that the general education system and specialist education services are not mutually exclusive options, and that there is a range of options in between that are available.

(c) Allow a free and informed choice between general and special systems;

(d) In no way limit the duty of States Parties to continue to strive to meet the needs of students with disabilities in the general education system.

4. States Parties shall ensure that children with sensory disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language or Braille. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.[63]

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate assistance to persons with disabilities.

Article 18
Participation in political and public life

States Parties recognize the political rights of persons with disabilities, without discrimination, and undertake to:

(a) Actively promote an environment in which persons with disabilities can effectively and fully participate in political and public life, directly or through freely chosen representatives, including the right and opportunity of citizens with disabilities to vote and be elected, and by ensuring that voting procedures and facilities:

(i) Are appropriate, accessible and easy to understand;

(ii) Protect the right of citizens with disabilities to vote by secret ballot; and

(iii) Allow, where necessary, the provision of assistance in voting to citizens with disabilities;

(b) Actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public administration, and shall encourage, as appropriate, their participation in public affairs, including to:[64]

(i) Participate on a basis of equality in the activities and administration of political parties and civil society;

(ii) Form and join organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels;

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[63] Some members of the Working Group preferred to keep this paragraph specific to children with sensory disabilities to allow, for example, deaf children to be taught in sign language. Other members questioned whether it should be broadened to include all children who might need alternative communication modes. In either case, there was agreement that wherever sign language, Braille, or alternative communication systems are taught and used, it should be in addition to, and not instead of, the teaching of written or spoken national languages. The Ad Hoc Committee may also consider whether this issue could be addressed in draft article 13 on freedom of expression and opinion.

[64] The Ad Hoc Committee may wish to consider the differing levels of obligations that are appropriate for State and non-State organs in this paragraph.

(c) Ensure that persons with disabilities and their organizations participate, on an equal basis to others, in all decision-making processes, in particular those concerning issues relating to persons with disabilities.[65]

Article 19
Accessibility

1. States Parties to this Convention shall take appropriate[66] measures to identify and eliminate obstacles, and to ensure accessibility for persons with disabilities to the built[67] environment, to transportation, to information and communications, including information and communications technologies, and to other services,[68] in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. The focus of these measures shall include, inter alia:

(a) The construction and renovation of public[69] buildings, roads and other facilities for public use, including schools, housing, medical facilities, indoor and outdoor facilities and publicly owned workplaces;

(b) The development and remodelling of public transportation facilities, communications and other services, including electronic services.

2. States Parties shall also take appropriate measures to:

(a) Provide in public buildings and facilities signage in Braille and easy-to-read-and-understand forms;

(b) Provide other forms of live assistance[70] and intermediaries,[71] including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;

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[65] The Ad Hoc Committee may wish to consider subparagraph (c) alongside the similar provision in draft article 4 (2) of the present draft, and whether both provisions are necessary. The Ad Hoc Committee may also wish to compare both paragraphs to article 6.1 (b) of International Labour Organization Convention No. 169 and rule 14 of the Standard Rules.

[66] Some members of the Working Group preferred the word "progressive" in this paragraph and in the chapeau of paragraph 2. Other members were concerned with consistency with other articles of the Convention. The Ad Hoc Committee may wish to consider alternative formulations.

[67] The Ad Hoc Committee may wish to consider whether the term "physical" should be used instead of "built", which is its near synonym in this context.

[68] The Ad Hoc Committee may wish to consider further the issue of attempting to list comprehensively the facilities and services covered in the chapeau to this paragraph, including whether a reference to the "communications environment" is desirable.

[69] The Ad Hoc Committee may wish to consider the scope of the provisions in this draft article, in particular paragraphs 1 (a) and (b), and 2 (a), (b), (c) and (d). The Working Group questioned whether the concept of public buildings, facilities and services should also extend to privately owned or developed buildings, facilities and services intended for public use, and what level of obligation States parties should place on private owners or developers to ensure access to persons with disabilities. Some members of the Working Group were of the view that privately owned or developed buildings, facilities and services should be covered by the obligations in this draft article, but other members wished to consider the implications of this further.

[70] "Live assistance" includes human assistance, such as guides and readers, and animal assistance, such as guide dogs. The Ad Hoc Committee may wish to consider whether there is a more self-explanatory term. The term is also used in draft article 20 (a).

[71] "Intermediaries" means people who do not assist but who rather act as a conduit for the transmission of information to certain groups of persons with disabilities, for example, sign language interpreters for the hearing impaired. The term is also used in draft article 20 (a).

(c) Develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;

(d) Encourage private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;

(e) Undertake and promote research, development and production of new assistive technologies, giving priority to affordably priced technologies;

(f) Promote universal design and international cooperation in the development of standards, guidelines and assistive technologies;

(g) Ensure that organizations of persons with disabilities are consulted when standards and guidelines for accessibility are being developed;

(h) Provide training for all stakeholders on accessibility issues facing persons with disabilities.

Article 20
Personal mobility[72]

States Parties to this Convention shall take effective[73] measures to ensure liberty of movement with the greatest possible independence for persons with disabilities, including:

(a) Facilitating access by persons with disabilities to high-quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(b) Promoting universal design for mobility aids, devices and assistive technologies and encouraging private entities which produce these to take into account all aspects of mobility for persons with disabilities;

(c) Undertaking and promoting research, development and production of new mobility aids, devices and assistive technologies;

(d) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(e) Facilitating the freedom of movement of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(f) Providing information to persons with disabilities about mobility aids, devices, assistive technologies and other forms of assistance and services;

(g) Promoting awareness about mobility issues for persons with disabilities.

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[72] This draft article is entitled "Personal mobility" to distinguish it from the broader right to liberty of movement in article 12 (1) of the International Covenant on Civil and Political Rights. The Ad Hoc Committee may wish to consider the placement of elements of this draft article, in particular subparagraphs (a), (b) and (c).

[73] Some members of the Working Group preferred the word "progressive" or "appropriate". Other members were concerned with consistency with other articles of the Convention. The Ad Hoc Committee may wish to consider alternative formulations.

Article 21
Right to health and rehabilitation[74]

States Parties recognize that all persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall strive to ensure no person with a disability is deprived of that right, and shall take all appropriate measures to ensure access[75] for persons with disabilities to health and rehabilitation services. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range and standard of health and rehabilitation services as provided other citizens, including sexual and reproductive health services;

(b) Strive to provide those health and rehabilitation services needed by persons with disabilities specifically because of their disabilities;

(c) Endeavour to provide these health and rehabilitation services as close as possible to people's own communities;[76]

(d) Ensure that health and rehabilitation services include the provision of safe respite places, to use on a voluntary basis, and counselling and support groups, including those provided by persons with disabilities;

(e) Provide programmes and services to prevent and protect against secondary disabilities, including among children and the elderly;[77]

(f) Encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities;[78]

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[74] Some members of the Working Group considered that grouping "rehabilitation" with "health" was inappropriate, and that it would be better dealt with in a separate article, because "rehabilitation" includes more than "medical rehabilitation", and should not be "medicalized". Rehabilitation includes medical, physical, occupational, communication and psycho-social services as well as training in everyday skills and mobility. The term "rehabilitation" as used here includes those processes sometimes called "habilitation" (the gaining of skills that people have not previously had, rather than the regaining of skills lost). The Ad Hoc Committee may wish to include an explanation of this nature in draft article 3 on definitions. Rehabilitation for the purposes of work and education may be best covered in the relevant draft articles on work and education.

[75] Some Working Group members suggested that affordability, and access to health insurance by persons with disabilities without discrimination on the basis of disability, should be addressed in the Convention.

[76] There was general agreement in the Working Group that, as far as possible, health-care and rehabilitation services should be decentralized, taking into account the degree of specialization. Some members of the Working Group also suggested that community-based rehabilitation programmes should be ensured, including the working in partnership with local communities and families to continue rehabilitation.

[77] There were conflicting views among members of the Working Group on the issue of the prevention of disability. For some, the Convention has to do with the rights of *existing* persons with disabilities, and should mention only the minimization of the effects or progression of their disability, and the prevention of further, secondary disabilities. Others felt that the prevention of disability per se should be included.

[78] Some members of the Working Group suggested there should be a specific mention of the fields of (bio)medical, genetic and scientific research, and its applications, and its use to advance the human rights of persons with disabilities.

(g) Encourage the development of sufficient numbers of health and rehabilitation professionals, including persons who have disabilities, covering all disciplines needed to meet the health and rehabilitation needs of persons with disabilities, and ensure that they have adequate specialized training;

(h) Provide to all health and rehabilitation professionals an appropriate education and training to increase their disability-sensitive awareness and respect for the rights, dignity and needs of persons with disabilities, in line with the principles of this Convention;[79]

(i) Ensure that a code of ethics for public and private health care, which promotes quality care, openness and respect for the human rights, dignity and autonomy of persons with disabilities, is put in place nationally, and ensure that the services and conditions of public and private health care and rehabilitation facilities and institutions are well monitored;

(j) Ensure that health and rehabilitation services provided to persons with disabilities, and the sharing of their personal health or rehabilitation information,[80] occur only after the person concerned has given their free and informed consent,[81] and that health and rehabilitation professionals inform persons with disabilities of their relevant rights;[82]

(k) Prevent unwanted medical and related interventions and corrective surgeries from being imposed on persons with disabilities;[83]

(l) Protect the privacy of health and rehabilitation information of persons with disabilities on an equal basis;[84]

(m) Promote the involvement of persons with disabilities and their organizations in the formulation of health and rehabilitation legislation and policy as well as in the planning, delivery and evaluation of health and rehabilitation services.[85]

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[79] Part of the intent of this subparagraph is to ensure that health and rehabilitation professionals providing services to persons with disabilities understand the ongoing effect disabilities have on a person's life, as opposed to more immediate medical considerations.

[80] Privacy issues have been also addressed in draft article 14 on the right to privacy.

[81] Free and informed consent has wider application in this draft Convention than this paragraph alone. The Ad Hoc Committee may wish to consider whether the following wording should be included in this subparagraph or broadened to become a definition in draft article 3:

"Informed decisions can be made only with knowledge of the purpose and nature, the consequences and the risks of the treatment and rehabilitation supplied in plain language and other accessible formats."

[82] Some members of the Working Group considered that the subparagraph should spell out the rights.

[83] Some members of the Working Group also considered that forced medical intervention and forced institutionalization should be permitted in accordance with appropriate legal procedures and safeguards (see also draft article 11).

[84] Some members of the Working Group suggested that this subparagraph was redundant and should be deleted.

[85] The involvement of persons with disabilities in formulating legislation and policy, as well as in the planning, delivery and evaluation of services, has wider applicability than this draft article. Some members of the Working Group suggested that it should be covered under draft article 4 on general obligations.

Article 22
Right to work[86,87,88]

States Parties recognize the right of persons with disabilities to work, which includes the opportunity to gain a living by work that they freely choose or accept, with a view to promoting equal opportunity and treatment of persons with disabilities, and protecting them from poverty. States Parties shall take appropriate steps to safeguard and promote the realization of this right, including measures to:

(a) Promote a labour market and work environment that are open, inclusive and accessible to all persons with disabilities;[89]

(b) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, assistive devices, and vocational and continuing training;

(c) Promote[90] employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment;

(d) Encourage employers[91] to hire persons with disabilities, such as through affirmative action programmes, incentives and quotas;[92]

(e) Ensure the reasonable accommodation of persons with disabilities in the workplace and work environment;[93]

(f) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(g) Promote vocational and professional rehabilitation, job retention and return-to-work programmes;

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[86] The Ad Hoc Committee may wish to consider the potential role of the International Labour Organization in implementing and monitoring the right to work under this Convention.

[87] Some members of the Working Group raised the issue of a need to address the special circumstances of women with disabilities in fulfilling this right.

[88] The Ad Hoc Committee may wish to consider whether the broad terms in which this draft article is expressed are consistent with the detailed provisions of other articles of the draft Convention. The Committee may also wish to consider in this context whether further thought should be given to elaborating provisions for the training of persons with disabilities.

[89] The Ad Hoc Committee may wish to consider whether to spell out the meaning of this provision in practice and the further definition of the term "inclusive" in this context. In this context, too, the Committee may wish to consider whether transportation to the workplace for persons with disabilities is covered under the provision of access to the workplace under draft article 19.

[90] The Ad Hoc Committee may wish to consider the addition of the phrase "pursue active labour market policies" at the beginning of this subparagraph.

[91] The Ad Hoc Committee may wish to consider the appropriateness of specifying the particular responsibility of Governments as employers in this context.

[92] The Ad Hoc Committee may wish to consider the appropriateness of specifically mentioning quotas as a possible measure in this draft article.

[93] Some members of the Working Group emphasized the particular importance of the obligation to make reasonable accommodation in the employment context, and considered that a more detailed paragraph on reasonable accommodation should be elaborated under the right to work, in addition to any draft article on reasonable accommodation elsewhere in the Convention.

(h) Protect[94] through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances,[95] and to ensure that persons with disabilities are able to exercise their labour and trade union rights;

(i) Ensure that persons with disabilities have equal opportunity to employment in the public sector;

(j) Promote recognition[96] of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and to combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

Article 23
Social security and an adequate standard of living[97,98]

1. States Parties recognize the right of all persons with disabilities to social security, including social insurance,[99] and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures to:

(a) Ensure access by persons with disabilities to necessary services, devices and other assistance for disability-related needs;[100]

(b) Ensure access by persons with disabilities, particularly women and girls with disabilities and the aged with disabilities, to social security programmes and poverty-reduction strategies, and to take into account the needs and perspectives of persons with disabilities in all such programmes and strategies;

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[94] The Ad Hoc Committee may wish to consider this formulation to take into account the protection of persons with disabilities from disguised discrimination in the workplace, such as stipulating unnecessary qualifications that have the effect of excluding persons with disabilities from employment.

[95] The Ad Hoc Committee may wish to consider whether the listing of working conditions here may be inadvertently limiting.

[96] The Ad Hoc Committee may wish to expand on the idea of recognition to encompass the formal recognition of the skills of persons with disabilities.

[97] Some members of the Working Group noted that the meaning of "social security" differed widely from State to State, and that the scope of the right to an adequate standard of living was much broader than social security. The Ad Hoc Committee may wish to consider this issue further.

[98] Some members of the Working Group expressed concern about the capacity of States parties to implement these provisions. The Ad Hoc Committee may wish to consider inclusion of the concept of progressive realization in this right if it is not addressed in a paragraph with general application elsewhere in the Convention.

[99] The Ad Hoc Committee may wish to consider inclusion of the concept of "social assistance".

[100] Some members of the Working Group considered that this provision should be strengthened to mention explicitly technical aids to mobility, transfer, auditory or visual perception and other special devices that persons with disabilities require. The Ad Hoc Committee may wish to consider whether this issue is adequately covered in draft article 20 on personal mobility.

(c) Ensure access by persons with severe[101] and multiple disabilities, and their families,[102] living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;[103]

(d) Ensure access by persons with disabilities to governmental housing programmes, including through earmarking percentages of governmental housing[104] for persons with disabilities;

(e) Ensure access by persons with disabilities to tax exemptions and tax benefits in respect of their income;[105]

(f) Ensure that persons with disabilities are able to access life and health insurance without discrimination on the basis of disability.[106]

2. States Parties recognize the right of all persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing, housing and access to clean water,[107] and to the continuous improvement of living conditions, and will undertake appropriate steps to safeguard and promote the realization of this right.

Article 24
Participation in cultural life, recreation, leisure and sport[108]

1. States Parties recognize the right of all persons with disabilities to take part in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

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[101] Some members of the Working Group questioned the use of the word "severe" on the grounds either that it was difficult to define or that it was prejudicial. The Ad Hoc Committee may wish to consider whether to omit it.

[102] There was a difference of view among Working Group members as to whether the provisions of this subparagraph should be extended to the families of persons with disabilities, and as to how "family" should be defined. The Ad Hoc Committee may wish to consider this further and with general application to the Convention.

[103] The Ad Hoc Committee may wish to consider whether the provisions of this subparagraph should apply to persons with disabilities generally.

[104] The Ad Hoc Committee may wish to consider whether the phrase "including through earmarking percentages of governmental housing" is appropriate in the draft Convention. Some members of the Working Group expressed the view that it was too prescriptive and may limit the measures that States parties could take to ensure access to governmental housing programmes. Some members of the Working Group also considered that non-discriminatory access to privately provided housing should also be specified.

[105] Some members of the Working Group expressed the view that this subparagraph was too prescriptive.

[106] The Ad Hoc Committee may wish to consider the extent to which States parties can determine the provision of insurance, which in many countries is typically the domain of the private sector.

[107] The Ad Hoc Committee may wish to consider the reference to "clean water" further. Some members of the Working Group considered that it should be deleted on the grounds that it was not a right guaranteed under the International Covenant on Economic, Social and Cultural Rights. Other members considered that the reference was critical to the treatment and prevention of disabilities, and should be strengthened to include "basic services".

[108] The Ad Hoc Committee may wish to consider whether and how the concept of accessibility could be expanded under this draft article.

(a) Have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community;

(b) Enjoy access to literature and other cultural materials in all accessible formats, including in electronic text, sign language and Braille, and in audio and multimedia formats;

(c) Enjoy access to television programmes, films, theatre and other cultural activities, in all accessible formats, including captioning and sign language;

(d) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the hospitality industry, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

3. Persons who are deaf shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity.[109]

4. States Parties recognize the right of persons with disabilities, on an equal basis with others,[110] to participate in recreational, leisure and sporting activities and shall take appropriate measures to:

(a) Encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at regional, national and international levels;[111]

(b) Ensure that persons with disabilities have an opportunity to organize and participate in sporting activities and to receive the same instruction, training and resources in support that is available to other participants;

(c) Ensure that persons with disabilities have access to sporting and recreational venues, and that children with disabilities have equal access to participating in sporting activities with the education system;

(d) Ensure that persons with disabilities have access to services from those involved in the organization of recreational, leisure and sporting activities.

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[109] The Ad Hoc Committee may wish to consider whether this provision would be more appropriately placed under another draft article.

[110] Some members of the Working Group considered that the phrase "on an equal basis with others" should be deleted from this paragraph, and that subparagraphs (b), (c) and (d) should instead include an obligation on States parties to remove discriminatory barriers, both environmental and societal, to the enjoyment of these rights. Other members expressed the view that "on an equal basis with others" should be retained, because sporting, recreational and leisure organizations and facilities were often within the private sector. The Ad Hoc Committee may wish to consider this issue further.

[111] Some members of the Working Group emphasized the importance of mainstreaming sporting activities for persons with disabilities. Others indicated that this obligation would need to be balanced with the promotion of separate sporting activities and organizations tailored to the needs and abilities of persons with disabilities, as well as disability specific sports that might not be included in mainstream sporting events. The Ad Hoc Committee may wish to consider how best to incorporate these views.

Article 25
Monitoring[112]

National implementation framework[113]

1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework[114] to promote, protect and monitor implementation of the rights recognized in the present Convention.

[112] The Working Group did not have time to consider the issue of international monitoring of the draft Convention. Some members of the Working Group indicated, however, that international monitoring was an issue of considerable importance to them. Other members, however, had reservations in this respect.

[113] The Working Group did not discuss in detail the wording of the draft provisions. It noted that the Ad Hoc Committee might wish to discuss the issue further and take into account the ongoing review of the work of the existing United Nations human rights treaty monitoring bodies.

[114] The Working Group did not reach agreement on a number of issues relating to the role of national human rights institutions in the process of promoting, protecting and monitoring the implementation of the Convention, but some members considered that they might perform, inter alia, the following functions: promoting awareness of the provisions of the Convention to persons with disabilities and to the general population; monitoring national legislation, policies and programmes to ensure consistency with the Convention; undertaking or facilitating research on the impact of the Convention or of national legislation; developing a system for assessing that impact on persons with disabilities; and hearing complaints about failure to observe the Convention.

Annex II

Summary of the discussions held regarding the issue of international cooperation to be considered by the Ad Hoc Committee

1. The Working Group held a discussion regarding the role of international cooperation in the light of an international convention for persons with disabilities.

2. It was recognized that the implementation of the Convention will be primarily a national responsibility. There was agreement that national compliance with the provisions of the Convention should not be conditional on receiving international development aid or assistance.

3. In that regard, several members of the Working Group expressed the view that international cooperation should be considered as an important means to support national efforts for the realization of the goals and objectives of the Convention and facilitate its implementation. In that context, a spirit of international cooperation, solidarity and partnership among States should be reflected in the Convention.

4. Several members of the Working Group considered that international cooperation should be analysed in a broad sense, to include elements such as the exchange of information and best practices, scientific research, training, awareness-raising, cooperation between organizations of persons with disabilities, the development of technology, and capacity-building; not interpreting international cooperation as the transfer of economic resources, economic aid or assistance. International cooperation should also be carried out in bilateral, regional and other multilateral forums, including through specialized agencies and financial institutions.

5. Some members expressed particular concern about creating international obligations with regard to international cooperation, development aid or assistance in the context of a binding instrument, although they actively engaged in international cooperation. Other members considered that the issue should not be interpreted as imposing obligations beyond any other existing model of international cooperation.

6. Some members of the Working Group recognized the challenge for the new century to incorporate the disability dimension in the mainstream of international cooperation activities and agreements, in order to contribute to the elimination of discrimination against persons with disabilities. In that regard, while recognizing that the major responsibility lay with the recipient countries, some delegations were of the view that both donor and recipient countries shared the responsibility for determining how development resources were allocated. Other members did not agree with that statement.

7. Subject to the provisions agreed for the content of the International Convention during the negotiations that will take place, the Ad Hoc Committee may wish to consider the issue of international cooperation, taking into account the various views and specific texts of proposals that have been presented as contributions to its work.

8. The Ad Hoc Committee may wish to take into account existing provisions on international cooperation in other international documents and treaties, such as:

(a) International Covenant on Economic, Social and Cultural Rights (articles 2(3), 22 and 23);

(b) Convention on the Rights of the Child (preamble and article 4);

(c) The Standard Rules (rule 22);

(d) General Comment No. 5 of the Committee on Economic, Social and Cultural Rights;

(e) Environmental treaties; the Convention against Corruption; and the Ottawa Convention on prohibition of landmines, among others.

9. In terms of placement, the following options were considered:

In the preamble;

Among the General Principles;

In the General Obligations;

As a separate article;

As a separate article, along with a provision either in the General Obligations, in the preamble or

In the General Principles.

10. Some members suggested that the issue could be included in the purposes of the Convention; others rejected that idea.

11. Some members considered that the issue should not be dealt with or included in the Convention. One expressed the view that the matter of international cooperation should be considered in the General Assembly.

12. The Working Group agreed that the phrasing of any provision regarding international cooperation should be careful and balanced in order to avoid misunderstandings with regard to the views mentioned above, and to clarify the scope of international cooperation in the context of this Convention.